

# Part 1

## Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services

### Editing Template

**CAUTION: Take care not to remove or otherwise edit the FillPoint areas when making custom edits to this document.**

*This AIA Document B141 – 1997 Part 1 has been revised with 2004 Arizona Modifications and approved by the Arizona Attorney General's Office.*

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**AGREEMENT** made as of the [%[Day]] day of [%[Month]] in the year [%[Year]]  
(In words, indicate day, month and year)

**BETWEEN** the Architect's client identified as the Owner:  
(Name, address and other information)

[%[OwnerFullFirmName]]  
[%[OwnerLongAddress]]  
[%[OwnerOtherInfo]]

and the Architect:  
(Name, address and other information)

[%[ArchitectFullFirmName]]  
[%[ArchitectLongAddress]]  
[%[ArchitectOtherInfo]]

For the following Project:  
(Include detailed description of Project)

[%[ProjectName]]  
[%[ProjectLocation]]  
[%[ProjectDescription]]

The Owner and Architect agree as follows:

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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## ARTICLE 1.1 INITIAL INFORMATION

§ 1.1.1 This Agreement is based on the following information and assumptions.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

### § 1.1.2 PROJECT PARAMETERS

§ 1.1.2.1 The objective or use is:

*(Identify or describe, if appropriate, proposed use or goals.)*

[%[UseOrGoals]

§ 1.1.2.2 The physical parameters are:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports about the site.)*

[%[PhysicalParameters]

§ 1.1.2.3 The Owner's Program is:

*(Identify documentation or state the manner in which the program will be developed.)*

[%[OwnersProgram]

§ 1.1.2.4 The legal parameters are:

*(Identify pertinent legal information, including, if appropriate, land surveys and legal descriptions and restrictions of the site.)*

[%[LegalParameters]

§ 1.1.2.5 The financial parameters are as follows.

- .1 ~~Amount of the Owner's overall budget for the Project, including the Architect's compensation, is:~~  
[%[ProjectBudget]
- .2 Amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is:  
and is the construction budget. [%[CostOfWorkBudget]

§ 1.1.2.6 The time parameters are:

*(Identify, if appropriate, milestone dates, durations or fast track scheduling.)*

[%[TimeParameters]

§ 1.1.2.7 The proposed procurement or delivery method for the Project is:

*(Identify method such as competitive bid, negotiated contract, or construction management.)*

[%[ProcurementOrDelivery]

§ 1.1.2.8 Other parameters are:

*(Identify special characteristics or needs of the Project such as energy, environmental or historic preservation requirements.)*

[%[OtherParameters]

### § 1.1.3 PROJECT TEAM

§ 1.1.3.1 The Owner's Designated Representative is:

*(List name, address and other information.)*

[%[OwnerRepName]

[%[OwnerRepAddress]

[%[OwnerRepOtherInfo]

~~§ 1.1.3.2 The persons or entities, in addition to the Owner's Designated Representative, who are required to review the Architect's submittals to the Owner are:  
(List name, address and other information.)~~

~~%[SubmittalReviewers]~~

~~§ 1.1.3.3 The Owner's other consultants and contractors are:  
(List discipline and, if known, identify them by name and address.)~~

~~%[OwnerConstntAndContr]~~

~~§ 1.1.3.4 The Architect's Designated Representative is:  
(List name, address and other information.)~~

~~%[ArchitectRepName]  
%[ArchitectRepAddress]  
%[ArchitectRepOtherInfo]~~

~~§ 1.1.3.5 The consultants retained at the Architect's expense are:  
(List discipline and, if known, identify them by name and address.)~~

~~%[ArchitectsConsultants]~~

~~§ 1.1.4 Other important initial information is:~~

~~%[OtherImpInfo]~~

~~§ 1.1.5 When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201 current as of the date of this Agreement, or as follows: with Arizona modifications last approved by the Attorney General as of the date of this Agreement.~~

~~%[GeneralConditions]~~

~~§ 1.1.6 The information contained in this Article 1.1 may be reasonably relied upon by the Owner and Architect in determining the Architect's compensation. Both parties, however, recognize that such information may change and, in that event, the Owner and the Architect shall negotiate appropriate adjustments in schedule, compensation and Change in Services in accordance with Section 1.3.3.~~

## **ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES**

~~§ 1.2.1 The Owner and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.~~

### **§ 1.2.2 OWNER**

~~§ 1.2.2.1 Unless otherwise provided under this Agreement, the Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project. The Owner shall furnish to the Architect, within 15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.~~

~~§ 1.2.2.2 The Owner shall periodically update the budget for the Project, including that portion allocated for the Cost of the Work. The Owner shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of the Architect to a corresponding change in the Project scope and quality.~~

~~§ 1.2.2.3 The Owner's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Designated Representative shall render decisions in a~~

timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

~~§ 1.2.2.4 The Owner shall furnish the services of consultants other than those designated in Section 1.1.3 or authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project.~~

~~§ 1.2.2.5 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.~~

~~§ 1.2.2.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.~~

~~§ 1.2.2.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.~~

### § 1.2.3 ARCHITECT

§ 1.2.3.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Article 1.4. and Arizona B141, Appendix A.

§ 1.2.3.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Section 1.1.2.6 and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

§ 1.2.3.3 The Architect's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Architect's behalf with respect to the Project.

§ 1.2.3.4 The Architect shall maintain the confidentiality of all Owner information specifically designated as ~~confidential by the Owner~~, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner. **The Architect shall not divulge information concerning this project to anyone (including, without limitation, information in applications for permits, variances etc.) without the Owner's prior written consent, which shall not be unreasonably withheld. The Owner reserves the right to release all information as well as to time its release, form and content. This requirement shall survive the expiration of the Contract.**

§ 1.2.3.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 1.2.3.6 The Architect shall review laws, codes, and regulations applicable to the Architect's services. ~~The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.~~ **In designing the Project and preparing the Construction Documents, the Architect shall design the Work in compliance with applicable laws, codes and generally accepted engineering and design standards. Local codes shall be applicable and local inspection requirements shall be satisfied as required by A.R.S. §34-461. If no local or State codes apply, the editions of Building, Plumbing, Mechanical and Electrical Code in effect on the date this Agreement is signed by the Architect shall apply. Also applicable are: AAC R10-3-401 through 412 relating to there implementation, the American National Standards Institute's Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped, The State of Arizona Fire Code; A.R.S. §34-451, the latest edition of ASHRAE 90.1, adopted by the Department of Commerce, A.R.S.**

§34-452, solar energy and life cycle cost analysis and Executive Order 91-3, relating to Water Conservation for State Facilities.

§ 1.2.3.7 The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

1.2.3.8 The Architect is responsible to the Owner for any services designed, approved, certified, or accepted by its Engineers, Architects, Consultants, agents and employees.

1.2.3.9 As used in this Agreement, the term "Architect" refers to the design professional who enters into this Agreement with the Owner whether registered as an architect, professional engineer, or other design specialist.

## ARTICLE 1.3 TERMS AND CONDITIONS

### § 1.3.1 COST OF THE WORK

§ 1.3.1.1 The Cost of the Work shall be ~~the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.~~ Before bids are received, the "Cost of the Work" is the latest approved Probable Construction Cost within the construction budget; after bids are received, the "Cost of the Work" is the lowest bona fide bid for Work within the construction budget received from a qualified bidder; after Substantial Completion, the "Cost of the Work" is the total cost, including Change Orders of all Work.

§ 1.3.1.2 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, ~~including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.~~

§ 1.3.1.3 The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

### § 1.3.2 INSTRUMENTS OF SERVICE

§ 1.3.2.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. Under this agreement, all construction drawings, specifications, notes, electronic data and other data prepared by the Architectural Firm and the Architect's Consultants, shall be considered a prototypical design and shall become property of the Owner to use for reference in construction of structures based on the prototype. The Architectural Firm's seal shall appear on construction drawings, specifications and other data requiring a seal for prototype structures. Owner acknowledges (1)-building codes differ in differing jurisdictions; that building codes, construction materials and technology change over time; (2) – that each site may have different needs (including but not limited to positioning and foundations); and (3) that each site project therefore requires a separate seal of a qualified design professional in that jurisdiction. The Owner's design professional for each site where the prototypes will be constructed has the Architectural Firm's permission to refer to and copy the design concepts contained in the construction drawings, specifications notes, electronic data and other data and the site specific design professional shall accept professional responsibility and seal the construction drawings, specifications and other data prepared and used for that specific site.

§ 1.3.2.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing



~~license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project. The Owner agrees not to sell or transfer any of the drawings, designs, specifications, notes, electronic data, or other elements of the Contract Documents to a third party for a profit to the Owner or for profit making purposes to any third party. In the case of future reuse of any of the documents by the Owner, the Architects and its registrant-consultant's name and seal shall be removed from the reused document(s) and the Architect and its registrant-consultants shall not be liable to the Owner or to third parties for their reuse. The Owner agrees to add the Architect and its registrant-consultants as an additional insureds under the Owner's self-insurance program or any successor insurance program for the sole purpose of protecting the Architect and its registrant-consultant from harm resulting from any such reuse.~~

~~§ 1.3.2.3 Except for the licenses granted in Section 1.3.2.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 1.3.2.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants. If the Contract is terminated by the Owner, all drawings, specifications, electronic data, and other documents relating to the design or observation of Work shall be surrendered forthwith by the Architect to the Owner.~~

~~§ 1.3.2.4 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement. The Architect shall provide in electronic data format the Instruments of Service.~~

### **§ 1.3.3 CHANGE IN SERVICES**

~~§ 1.3.3.1 Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, when authorized by the Owner in writing in advance of performance. if mutually agreed in writing, if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Section 1.3.3.2. In the absence of mutual agreement in writing, the Architect shall notify the Owner prior to providing such services. If the Owner deems that all or a part of such Change in Services is not required, the Owner shall give prompt written notice to the Architect, and the Architect shall have no obligation to provide those services. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect to an adjustment in compensation pursuant to Section 1.5.2, and to any Reimbursable Expenses described in Section 1.3.9.2 and Section 1.5.5.~~

~~§ 1.3.3.2 If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment in the Architect's schedule and compensation: additional services shall be provided.~~

- ~~.1~~ change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;
- ~~.2~~ enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
- ~~.3~~ decisions of the Owner not rendered in a timely manner;
- ~~.4,3~~ significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
- ~~.5~~ failure of performance on the part of the Owner or the Owner's consultants or contractors;

- ~~.6~~ preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto;
- ~~.7~~ change in the information contained in Article 1.1.
- .4 **Special inspections as specified by either the Building Code or by the permit issuing authority.**
- .5 **Providing services in connection with extensive Change Orders and Construction Change Directives, unless resulting from the fault of the Architect.**
- .6 **Providing the services, not otherwise provided for in the contract Documents, made necessary by the discovery of a latent condition which requires a service under A.I.A. 201 Article 4.6, by default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction unless unjustifiably caused by the Architect or other fault of the Architect.**
- .7 **Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work, but excluding claims resulting from inadequate drawings or specifications, delays unjustifiably caused by the Architect or other fault of the Architect.**
- .8 **Preparing documents for alternate, separate or sequential bids if not contemplated under the Architectural Program or the initial Contract for Construction.**
- .9 **Providing a detailed study to determine how energy conservation systems and solar devices might most effectively be utilized in the proposed structure.**
- .10 **Providing analyses of the Owner's needs and programming the requirements of the Project, except to the extent required by the Architectural Program.**
- .11 **Making investigations, surveys, valuations, inventories or detailed appraisals of existing facilities, and services required in connection with the work of a construction manager or separate consultant retained by the Owner or construction performed by the Owner.**

#### § 1.3.4 MEDIATION

~~§ 1.3.4.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.~~

~~§ 1.3.4.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.~~

~~§ 1.3.4.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

#### § 1.3.5 ARBITRATION

~~§ 1.3.5.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 1.3.4. **The Architect understands that all claims made by the Owner against the Architect and by the Architect against the Owner which have not been resolved in a manner acceptable to both the Architect and the Owner shall be resolved as provided by A.R.S. §41-2611 through §41-2617 and A.A.C. R2-7-901 through R2-7-937.**~~

~~§ 1.3.5.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.~~

**§ 1.3.5.3** A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. **The Architect shall defend, indemnify and hold the Owner, its officers, agents and employees, harmless from all liens, suits, claims demands, obligations, and liability to the extent of any negligent acts or omissions of the Architect, and any of its consultants, agents, officers or employees arising from torts or the Architect's breach of this agreement. In no case shall the Architect be liable for claims, expenses, loss or damage to the extent of any negligent acts or omissions of the Owner, and any of its contractors, agents, officers or employees arising from torts or the Owner's breach of this Agreement. The Architect agrees to indemnify the Owner for the Owner's vicarious liability.**

**§ 1.3.5.4** No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

**§ 1.3.5.5** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### **§ 1.3.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 1.3.8.

### **§ 1.3.7 MISCELLANEOUS PROVISIONS**

**§ 1.3.7.1** This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Section 1.4.2. **State of Arizona**

**§ 1.3.7.2** Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. **This Contract shall not be interpreted by comparison to differing or additional language in the standard AIA B141 Contracts.**

**§ 1.3.7.3** Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed. **Terms in this Agreement, shall have the same meaning as those in the latest edition of AIA Document A201, General Conditions of the Contract for Construction with Arizona modifications last approved by the Office of the Attorney General as of the date of this Agreement.**

**§ 1.3.7.4** To the extent damages are covered by property insurance during construction, the Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

**1.3.7.4.1 Without limiting any liabilities or any other obligations of the Architect, the Architect shall purchase and maintain (and cause its consultants to purchase and maintain), in a company or companies lawfully authorized or approved by the Department of Insurance to do business in the State of Arizona, and rated at least a VII in the current A.M. Bests, the minimum insurance coverage below.**



.1 Workers Compensation and Employers Liability insurance as required by the State of Arizona Workers Compensation Statutes, as follows:

<u>Workers Compensation (Coverage A):</u>	<u>Statutory Arizona benefits;</u>
<u>Employers Liability (Coverage B):</u>	<u>\$500,000 each accident;</u>
	<u>\$500,000 each employee/disease;</u>
	<u>\$1,000,000 policy limit/disease.</u>

Policy shall include endorsement for All State coverage for state of hire.

- .2 Commercial General Liability, with minimum limits of \$1,000,000 per occurrence of minimum unimpaired Products and Completed Operations Aggregate and General Aggregate minimum limit of \$2,000,000. Coverage shall be at least as broad as the Insurance Service Office, Inc. Form GG00010196, issued on an Occurrence basis. The policy shall include coverage for Bodily Injury; Broad Form Property Damage (including completed operations); Personal Injury; Blanket Contractual Liability; Products and Completed Operation, and this coverage shall extend for one year past acceptance cancellation or termination of the services or work defined in this contract; and Fire Legal Liability.
- .3 Comprehensive Automobile Liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000 for each occurrence with respect to the Architect's owned, hired and non-owned vehicles assigned to or used in performance of the Architect's services.
- .4 Professional Liability Insurance with minimum limits of \$1,000,000 (Each Claim and/or Each Wrongful Act and/or Each Loss) or 10% of the cost of the Work as defined by 1.1.2.5.2, whichever is larger with respect to this contract. The Retroactive Coverage Date (if written on a Claims-Made form) shall be the same as the effective date or earlier of this contract. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract. The policy shall contain an Extended Claim Reporting Provision of not less than one year following termination of the policy

1.3.7.4.2 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitation shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the 11th Month warranty Report, as required by Clause 26.14.4 for acts or failures to act occurring after Substantial Completion.

1.3.7.4.3 The policies required for Commercial General Liability insurance and Commercial Automobile Liability insurance shall be endorsed to include the Owner, its agents, officers and employees as additional insured and shall specify that the insurance afforded by the Architect shall be primary insurance and that any insurance carried by the Owner shall be excess, except as provided by State law, and not contributory insurance to that provided by the Architect.

1.3.7.4.4 The Architect shall provide a certificate of insurance to the Owner which shall identify this Agreement and contain provision that coverage afforded under the required policies will not be cancelled, terminated, or reduced in limit or restricted in scope of coverage until at least 30 days prior written notice has been given to the Owner. Coverage provided by these policies shall be promptly renewed by the Architect and the Owner shall be given 30 days notice in the event that renewal is unobtainable. Failure on the part of the Architect to procure or maintain required insurance shall constitute a material breach of contract upon which the Owner may immediately terminate this Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies to paid by the Owner may offset the cost of the premiums against any monies due to the Architect from the Owner.

**1.3.7.4.5 The Owner reserves the right to request and receive within 10 working days from receipt of request certified copies of any or all of the above policies and endorsements. If the policy has not yet been issued, the owner will accept a copy of a specimen contract and the binder within 10 days of its issuance.**

**§ 1.3.7.5** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

**§ 1.3.7.6** Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

**§ 1.3.7.7** The Architect ~~shall have the right~~ **may request in writing permission** to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. **The Owner shall have the right to approve or disapprove such use of representation or photography in its sole discretion.**

**§ 1.3.7.8** ~~If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to~~ **prepared by** the Architect **and submitted to the Owner** for review at least ~~44~~ **30** days prior to the requested dates of execution. **The Owner shall approve or modify the proposed certificate at least 15 days prior to execution.** ~~The Architect shall not be required to execute~~ **The Owner shall not request** certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

**§ 1.3.7.9** The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, ~~except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.~~

**1.3.7.10 The parties in any litigation arising out of this Agreement shall be entitled to recover its reasonable costs, including expert fees, attorneys' fees, and court costs, from the other party based upon the reasonable hourly rates of such persons with similar experience in the community provided however, this paragraph shall not apply to administrative dispute resolution proceedings. Such costs shall be determined by the court and not by the jury.**

**1.3.7.11 The Architect shall comply with all applicable Federal, State and local laws, rules and ordinances pertaining to equal employment opportunity and non-discrimination, including but not limited to A.R.S. § Title 41, Chapter 4, and Executive Order 99-4.**

## **§ 1.3.8 TERMINATION OR SUSPENSION**

**§ 1.3.8.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at **within fourteen days after the Architect's billing is approved by the Owner, which approval shall not be unreasonably withheld,** the Architect's option, cause for suspension of ~~may suspend~~ performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 1.3.8.2** If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect

shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 1.3.8.3 If the Project is suspended or the Architect's services are suspended for more than ~~90~~ **180** consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 1.3.8.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 1.3.8.5 This Agreement may be terminated by the Owner ~~upon not less than~~ **for the convenience of the Owner for** seven days' **advance** written notice to the Architect ~~for the Owner's convenience and without cause~~ **specifying the termination date of the Agreement.**

§ 1.3.8.6 In the event of a termination **by the Owner for convenience or any reason** not the fault of the Architect, the Architect shall be **reasonably** compensated **based on reasonable overhead and profit** for services **properly** performed **on the project** prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 1.3.8.7 **the effective date of the termination and for reasonable expenses properly incurred as a result of the termination. In the event this Agreement is terminated before the Architect's services under this Agreement are completed, the Owner may take over the services to be done under this Agreement and prosecute the services to completion by contract or otherwise.**

§ 1.3.8.7 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect. **Every payment obligation of the Owner created by the Agreement is conditioned upon the availability of State or Federal funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of the Architect's services, this Agreement may be terminated by the Owner at the end of the period for which funds are available. The Owner shall notify the Architect at the earliest possible time if the Architect's services will or may be affected by a shortage of funds. No liability shall accrue to the Owner in the event this provision is exercised, and the Owner shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.**

**1.3.8.8 The Owner may terminate this Agreement without penalty or further obligation pursuant to A.R.S. §38-511 if any person significantly involved in initiating, securing, drafting or creating the Agreement on behalf of the Owner is or becomes, within three years after its execution and while the Agreement is in effect, an employee of or consultant to the Architect with respect to the subject matter of the Agreement. Such termination shall be effective when written notice from the Owner is received by the Architect, unless the notice specifies a late time. The Owner may, by written notice to the Architect, terminate this Agreement if it is found by the Owner that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Architect or any agent or representative of the Architect to any officer or employee of the State of Arizona.**

### § 1.3.9 PAYMENTS TO THE ARCHITECT

§ 1.3.9.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Architect's statement of services. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, ~~or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.~~

§ 1.3.9.2 Reimbursable Expenses are **direct actual costs which are** in addition to compensation for the Architect's services and ~~include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses~~ **are limited to:**

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, ~~and electronic communications~~ **subject to the cost limitation of the State of Arizona Travel Policy;**
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;

- .4 ~~expense of overtime work requiring higher than regular rates if authorized in advance by the Owner~~ **long distance telephone charges;**
- .5 ~~renderings, models and mock ups requested by the Owner~~ **job site office expenses;**
- .6 ~~expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants~~ **surveys, tests and reports requested by the Owner under Section 2.2.1.2;**
- .7 reimbursable expenses as designated in Section 1.5.5;
- .8 other similar direct Project related expenditures.

**Prior to each phase of the Work the Architect shall furnish for the Owner's approval an estimate of reimbursable expenses for the forthcoming phase of the Work. The cumulative total of requests for reimbursement for that phase shall not exceed the approved estimate without prior written authorization by the Owner.**

**§ 1.3.9.3** Records of Reimbursable Expenses ~~pertaining to the Project, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times~~ **shall be kept in accordance with generally accepted accounting principals.**

**§ 1.3.9.4** Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project. And the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

#### **ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS**

**§ 1.4.1** Enumeration of Parts of the Agreement. This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect. This Agreement comprises the documents listed below.

**§ 1.4.1.1** Standard Form of Agreement Between Owner and Architect, AIA Document B141-1997, **with Arizona Modifications.**

**§ 1.4.1.2** Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997, **with Arizona Modifications** or as follows:

*(List other documents, if any, delineating Architect's scope of services.)*

**AIA B141 Appendix A**

`[%[ArchitectsServicesDocs]`

**§ 1.4.1.3** Other documents as follows:

*(List other documents, if any, forming part of the Agreement.)*

`[%[ForEachBlock("od", OtherDocuments)]][od.Reference]`

`[%[EndBlock()]`

**§ 1.4.2** Special Terms and Conditions. Special terms and conditions that modify this Agreement are as follows:

`[%[SpecialTermsAndConditions]`

#### **ARTICLE 1.5 COMPENSATION**

**§ 1.5.1** For the Architect's services as described under Article 1.4, compensation shall be computed as follows:

`[%[ArchitectsCompensation]`

**1.5.1.1 For Services of the Architect's Consultants, such as structural, mechanical, electrical engineers, etc., in addition to those identified in Appendix A, compensation shall be the actual expenses incurred by the Consultant.**

§ 1.5.2 If the services of the Architect are changed as described in Section 1.3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be ~~calculated as described below or, if no method of adjustment is indicated in this Section 1.5.2, in an equitable manner~~ **direct actual costs of Personnel expenses as set forth in the fixed rates listed below:**

*(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.)*

%[ArchitectCompAdjust]

§ 1.5.3 For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of **1.0** ~~%[ChangeInServiceCompWords] ( %[%ChangeInServiceComp] )~~ times the amounts billed to the Architect for such services.

§ 1.5.4 For Reimbursable Expenses as described in Section 1.3.9.2, ~~and any other items included in Section 1.5.5 as Reimbursable Expenses,~~ the compensation shall be computed as a multiple of ~~%[ReimbursableExpensesWords] ( %[%ReimbursableExpenses] )~~ times the **actual** expenses incurred by the Architect, and the Architect's employees and consultants.

§ 1.5.5 Other Reimbursable Expenses, if any, are as follows:

%[OtherReimbursableExp]

§ 1.5.6 ~~The rates and multiples for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.~~

§ 1.5.7 ~~An initial payment of %[%InitialPaymentWords] (\$ %[%InitialPayment] ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent p Payments for services **and Reimbursable Expenses** shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.~~

§ 1.5.8 Payments are due and payable **pursuant to A.R.S. §35-342** ~~%[%PayDueAndPayWords] ( %[%PayDueAndPay] )~~ days from the date of the Architect's invoice. Amounts **allowed but** unpaid **(30 or more)** ~~%[%InterestOverduePayWords] ( %[%InterestOverduePay] )~~ days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect **specified by A.R.S. §44-1201.**  
*(Insert rate of interest agreed upon.)*

%[AgreedInterestRate] %[%BasisForInterest]

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

§ 1.5.9 If the services covered by this Agreement have not been completed within **3** ~~%[%MonthToCompleteSvcsWords] ( %[%MonthToCompleteSvcs] )~~ months of the date **of the required date of Substantial Completion of the Work** hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Section 1.5.2.

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT



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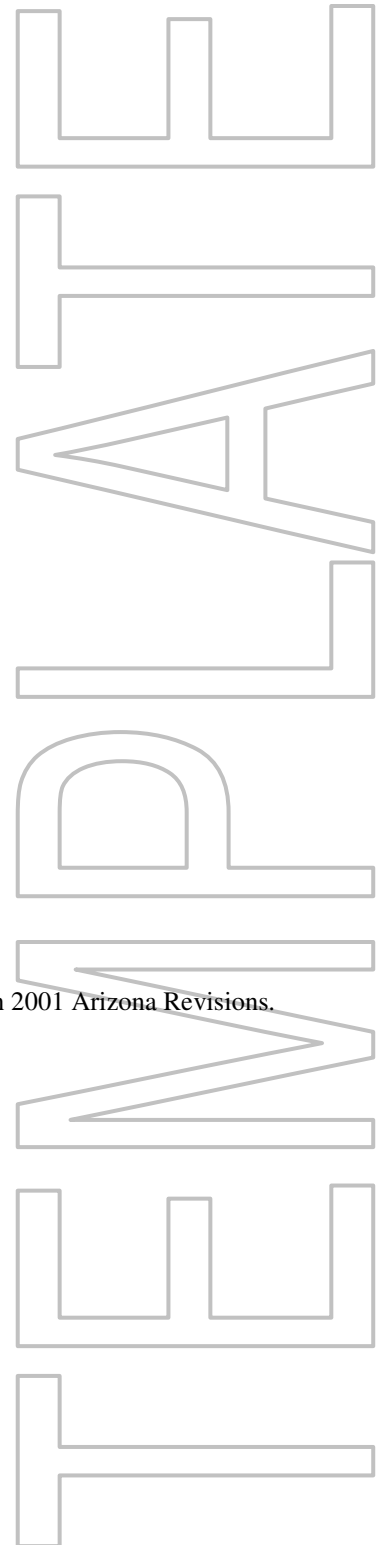
(Signature)  
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(Printed name and title)

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(Signature)  
%[ArchitectRepName]%[ArchitectRepTitle]  
(Printed name and title)

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This AIA Document B141 contains revisions, dated December 13, 2004, to the B141 with 2001 Arizona Revisions.